

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CALVIN MCKELLER,)	
)	
Petitioner,)	
)	
v.)	No. 1:19-cv-02112-JPH-MJD
)	
WARDEN,)	
)	
Respondent.)	

ORDER DENYING MOTION TO PROCEED ON APPEAL *IN FORMA PAUPERIS*


The petitioner Calvin McKeller seeks leave to proceed on appeal without prepayment of the appellate fees of \$505.00. An appeal may not be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915; *see Coppedge v. United States*, 369 U.S. 438 (1962). "Good faith" within the meaning of § 1915 must be judged by an objective, not a subjective, standard. *See id.*

Mr. Keller's petition for writ of habeas corpus raised two grounds for relief: 1) that his trial counsel provided ineffective assistance of counsel when counsel failed to object to a faulty accomplice liability jury instruction, and 2) that his admission that he was a habitual offender was not made voluntarily, knowingly, or intelligently. The Court denied Mr. Keller's first ground for relief because the Indiana Court of Appeals reasonably applied *Strickland v. Washington*, 466 U.S. 668, 687 (1984), when it determined that Mr. McKeller was not prejudiced by his counsel's error because the evidence against him—including testimony from the victim that Mr. McKeller participated in the robbery—was strong. The Court denied his second ground for relief because there is no clearly established federal law that habitual offender admissions are guilty pleas to which *Boykin v. Alabama*, 395 U.S. 238, 242 (1969), applies.

At this time, there is no objectively reasonable argument Mr. McKeller could present to argue that the disposition of his petition was erroneous. Furthermore, his motion does not identify any issues for appeal. Dkt. 26 at 1. In pursuing an appeal, therefore, the petitioner "is acting in bad faith . . . [because] to sue in bad faith means merely to sue on the basis of a frivolous claim, which is to say a claim that no reasonable person could suppose to have any merit." *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000). Accordingly, his appeal is not taken in good faith, and for this reason his request for leave to proceed on appeal *in forma pauperis*, dkt. [26], is **denied**.

SO ORDERED.

Date: 1/19/2022


James Patrick Hanlon
United States District Judge
Southern District of Indiana

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